IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5110 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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G S R T C

Versus

JK BARAD

Appearance:

1. Special Civil Application No. 5110 of 2002

MR HS MUNSHAW for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/08/2002

ORAL JUDGEMENT

#. Rule. Mr.Paul, waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner - Corporation has challenged the award of the Labour Court, Palanpur dated 30.7.2001, by which the reference of the workman was allowed by passing the order of reinstatement in favour of the respondent workman with 25% back wages. At the relevant time, the respondent - workman was serving as a driver with the petitioner - Corporation. The respondent was subjected to the chargesheet as he remained absent without leave for about four months. Ultimately, the departmental inquiry was held against him, and he was dismissed from service. The said dismissal was challenged by the respondent - workman by raising the industrial dispute, which was referred to the Labour Court, Palanpur, and the same was numbered as (LCP) 792 of 1996 (Old No.269 of 1986). The Labour Court partly allowed the said reference and the respondent was reinstated in service with 25% back wages for the intervening period. The Labour Court came to the conclusion that the said workman was not subjected to similar type of misconduct in the past and since the inquiry was held ex parte and in the inquiry proceedings, the Inquiry Officer, mainly, relied upon the report of the reporter only, dismissal order was found to be unjust. Ultimately, the Labour Court exercised its powers under section 11-A of the Industrial Disputes Act and passed the order of reinstatement with 25% back wages. The aforesaid order is impugned at the instance of the petitioner Corporation in this petition.

#. Mr.Munshaw, learned advocate, who is appearing for the petitioner - Corporation, has vehemently submitted that, the misconduct against the concerned workman was proved in the departmental inquiry. According to him, the concerned workman was serving on the sensitive post of a driver and he remained absent without prior permission for about four months. It is also submitted by Mr.Munshaw that the concerned workman did not remain present even in the inquiry proceedings and ultimately disciplinary authority had no option, but to proceed with the inquiry proceedings ex parte. He also submitted that, this is not a case in which the Labour Court should have exercised the powers under section 11-A of the Act. Alternatively, he submitted that, in any case, while exercising the powers under section 11-A of the Act, the Labour Court has not imposed any punishment at all and instead awarded 25% back wages for the intervening period. It is, therefore, argued that, in any case, the order of the Labour Court is required to be modified, and, at least, some penalty is required to be inflicted upon the concerned workman even if it is held that the powers under section 11-A of the Act are required to be

exercised in the present case.

#. Mr.Paul, who is appearing for the respondent-workman, has submitted that, he has no objection, if the order of the Labour Court is suitably modified and some penalty is inflicted upon the respondent workman.

#. I have heard the learned advocates of both the sides, and also perused the order of the Labour Court.

#. In my view, the order of the Labour Court is absolutely unsustainable. The Labour Court has not appreciated the facts and circumstances of the case in its proper perspective. Apart from the said fact, the judgment of the Division Bench, which was cited before the Labour Court was dealt with in a very casual manner. The Labour Court, while exercising the powers under section 11-A of the Act, has not even substituted the punishment imposed by the management by imposing any other suitable penalty, and instead has granted 25% back wages to the respondent workman against whom the misconduct is proved in the departmental proceedings. The Labour Court has not given justification or reasons in the award for substituting the penalty. In my view, since the misconduct is proved in the inquiry, there was no scope for granting any back wages to the respondent workman. The entire award suffers from total non-application of mind and the reasoning of the Labour Court is absolutely unsatisfactory. In my view, the judgment of the Division Bench of this Court, which was cited before the Labour Court, was not properly considered at all by the Labour Court and in a very casual manner the said judgment is dealt with by the Labour Court. I am sure that, appropriate care will taken by the concerned court, while dealing with the judgments of the superior Courts and the said judgments will not be treated in such casual manner, which has been done in the instant case by the Labour Court. The Labour Court has also failed to consider that the concerned workman did not participate in the departmental proceedings, and, therefore, it cannot be said that, the management deliberately proceeded with the inquiry ex parte. The Labour Court has not even looked into the past record produced at page 19 of this petition, which was also produced before the Labour Court as argued by Mr.Munshaw. It is expected from the Labour Court to consider all the relevant documents and evidences and to appreciate the same in proper manner. Considering the aforesaid record, it is clear that the concerned workman was subjected to misconduct for so many times in the past. In my view, the award of the Labour Court suffers

from total nonapplication of mind as the relevant facts and circumstances of the case and the evidence on record are not taken into consideration by the Labour Court while passing the impugned award.

#. Mr.Paul, however, submitted that, the respondent workman has already been reinstated in service by the Corporation before filing of this petition. He, therefore, submitted that, this Court may inflict just and proper punishment by substituting the order of the Labour Court. He also submitted that the respondent workman is now serving sincerely and satisfactorily. Considering the fact that the petitioner - Corporation has now already reinstated the concerned workman in service, in my view, instead of sending the matter back to the Labour Court for reconsidering the question of penalty and since both the learned advocates have left the question of penalty to this Court, in my view, it would be just and proper to impose the punishment of withholding of three increments with future effect so that it may have deterrent effect on the concerned workman in future. Under these circumstances, while confirming the order of reinstatement passed by the Labour Court, the respondent workman will be subjected to the penalty of withholding of three increments with future effect and he will not be entitled to any back wages for the entire intervening period, i.e. till the date on which he is reinstated in service. It is, however, clarified that, so far as other benefits like continuity of service or periodical increments etc. are concerned, the respondent - workman will be entitled to the same. Mr.Paul has also assured the Court that, the respondent workman will be more careful in future and he will serve with sincerity. This statement is made by Mr.Paul by taking the instruction from his client, who is personally present in the Court. The award of the Labour Court is accordingly modified to the aforesaid extent. The petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Copy of this order be sent to the concerned Judge of the Labour Court, for information.

(P.B.Majmudar,J)
(pathan)